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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,715	06/12/2006	Luis Alfredo Diaz Chavez	22080002	7944

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01/27/2010

EXAMINER

LEE, REBECCA Y

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

01/27/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/565,715

**Applicant(s)**

CHAVEZ ET AL.

**Examiner**

REBECCA LEE

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/20/10 has been entered.

### ***Status of Claims***

Claim 7 is withdrawn, claims 1-6 are presented for examination where no claim has been amended.

### ***Status of Previous Rejections***

The 35 U.S.C. 103(a) rejections of claims 1-6 as being unpatentable over Huege et al. (US5616283) has been maintained.

### ***Claim Rejections - 35 USC § 103***

Claims 1-6 are rejected under 35 U.S.C. 103(a) as obvious over Huege et al. (US5616283).

Regarding to claim 1-2 and 4-5, Huege et al. discloses a hydrated lime ( $\text{Ca}(\text{OH})_2$ ) slurry (Column 1, lines 56-58), which is a particular case of calco-magnesian aqueous

suspension, with a solid content of more than 39% by weight (Column 2, lines 25-28), more specifically, 35-55% by weight (Column 2, lines 44-46); and a viscosity of less than 1000 cps (Column 2, lines 25-28), which is equivalent to 1 Pa.s.

Huege et al. teaches the particle size is finer than 20 mesh (Column 2, lines 46-47), which is approximately 841  $\mu\text{m}$ . It is the examiners position that surface area is a function of particles size, thus it would be appreciated that the particle size disclosed by Huege et al. corresponding to a surface area reads on the claimed range absent specific evidence to the contrary.

Regarding to claim 3, with  $x=1$ ,  $y=0$ , the suspension is anticipated by or obvious over Huege et al. (Column 1, lines 56-58).

Regarding to claim 6, the size defined by Huege et al. as less than 841  $\mu\text{m}$  would broadly encompass the claimed size of  $D_{98}$  of less than 20 microns. With respect to the  $d_{50}$  and  $d_{90}$  limitation, it is to be noted that no size values are defined and it is the examiner's position that all compositions will contain a  $d_{50}$  and  $d_{90}$  as well as a  $d_{98}$  absent evidence to the contrary.

### ***Response to Arguments***

Applicant's arguments filed 01/20/10 have been fully considered but they are not persuasive.

Applicant traverses the rejection on the ground that the specific surface area disclosed by Huege et al., which broadly encompass the claimed range, is only referred to external specific surface area, while the BET specific surface area recited in the

instant application includes internal specific surface area; and one skilled in the art would expect the particles in the calco-magnesian aqueous suspension of Huege et al. to be porous. Even though the solid matter in Huege et al. has porosity to some extent, no evidence is showing that the porosity in the solid matter of Huege et al. in fact results in a BET surface area fall beyond the claimed range. Thus, applicant's argument is not convincing.

### ***Conclusion***

This is a RCE of applicant's earlier Application No. 10565715. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REBECCA LEE whose telephone number is (571)270-5856. The examiner can normally be reached on Monday-Friday 8:00 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROY KING can be reached on (571)272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L./  
Examiner, Art Unit 1793

/Roy King/  
Supervisory Patent Examiner, Art  
Unit 1793